

APR 28 2011

JULIA C. DUDLEY, CLERK
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DEPUTY CLERK

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
ROANOKE DIVISION

TALIB-DIYN AZIZ,)	
)	Case No.7:11CV00039
Plaintiff,)	
)	
v.)	MEMORANDUM OPINION
)	
)	
PITTSYLVANIA COUNTY JAIL, <u>et al.</u> ,)	By: Samuel G. Wilson
)	United States District Judge
Defendants.)	
)	

Plaintiff Talib-Diyn Aziz filed this civil rights action pursuant to 42 U.S.C. § 1983 alleging that various officials violated his constitutional rights during his incarceration at the Pittsylvania County Jail by taping him to a chair and by forcing him to cut his hair in violation of his religious beliefs. The court filed the complaint conditionally to allow Aziz to name proper defendants, which he did through amendments.

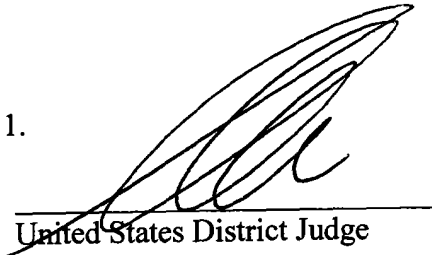
The court concludes, however, that Aziz's claim that the prosecutor wrongfully obtained a conviction against Aziz by bribing a witness to testify falsely against him is not actionable under § 1983 at this time, because Aziz offers no evidence that the allegedly wrongful conviction has been set aside. See Wilkinson v. Dotson, 544 U.S. 74, 81-82 (2005) (noting that "a [state] prisoner cannot use § 1983 to obtain damages where success *would necessarily* imply the unlawfulness of a (not previously invalidated) conviction or sentence") (emphasis in original). For this reason, the court will summarily dismiss this claim without prejudice, pursuant to 28 U.S.C. § 1915A(b)(1), and direct the clerk to terminate the Commonwealth Attorney's Office as a defendant.

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The court finds that the other claims alleged in Aziz's complaint as amended survive screening under § 1915A(b). Therefore, the court will issue a separate order directing the clerk to attempt service of process upon the remaining defendants.

The clerk will send a copy of this memorandum opinion and the accompanying order to the parties.

ENTER: This 28th day of April, 2011.



United States District Judge